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1 BEFORE THE ARIZONA POWER PLANT AND
2 TRANSMISSION LINE SITING COMMITTEE

3 IN THE MATTER OF THE APPLICATION)
4 OF HUALAPAI VALLEY SOLAR LLC, IN)
5 CONFORMANCE WITH THE)
6 REQUIREMENTS OF ARIZONA REVISED)
7 STATUTES §40-360.03 AND §40-360.06,)
8 FOR A CERTIFICATE OF) DOCKET NO.
9 ENVIRONMENTAL COMPATIBILITY) L00000NN-09-0541-00151
10 AUTHORIZING CONSTRUCTION OF THE)
11 HVS PROJECT, A 340 MW PARABOLIC) LS CASE NO. 151
12 TROUGH CONCENTRATING SOLAR THERMAL)
13 GENERATING FACILITY AND AN)
14 ASSOCIATED GEN-TIE LINE)
15 INTERCONNECTING THE GENERATING) MEETING / HEARING
16 FACILITY TO THE EXISTING MEAD-)
17 PHOENIX 500kV TRANSMISSION LINE,)
18 THE MEAD-LIBERTY 345kV TRANSMISSION)
19 LINE OR THE MOENKOPI-EL DORADO)
20 500kV TRANSMISSION LINE.)

21 At: Goodyear, Arizona
22 Date: January 27, 2010
23 Filed: February 1, 2010

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ARIZONA CORPORATION COMMISSION
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24 REPORTER'S TRANSCRIPT OF PROCEEDINGS

25 APPLICANT'S APPLICATION FOR RATIFICATION AND
RECONSIDERATION OF INTERVENTION REQUEST

Arizona Corporation Commission

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Prepared for:

SITING COMMITTEE

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard before the Arizona
3 Power Plant and Transmission Line Siting Committee, at the
4 Hampton Inn and Suites, 2000 North Litchfield Road,
5 Goodyear, Arizona, commencing at 8:30 a.m. on the 27th day
6 of January, 2010.

7

8 BEFORE: JOHN FOREMAN, Chairman

9 DAVID L. EBERHART, Arizona Corporation
Commission

10 PAUL W. RASMUSSEN, Department of Environmental
Quality

11 JESSICA YOULE, Department of Commerce

12 GREGG HOUTZ, Arizona Department of Water
Resources

13 PATRICIA NOLAND, Appointed Member

14 JEFF McGUIRE, Appointed Member

15 MIKE WHALEN, Appointed Member

16 MIKE PALMER, Appointed Member

17 BARRY WONG, Appointed Member

18 APPEARANCES:

19 For the Applicant:

20 LEWIS AND ROCA, L.L.P.

21 By: Mr. Thomas H. Campbell

22 and Mr. Albert H. Acken

23 40 North Central Avenue

24 Phoenix, Arizona 85004

25 For the Proposed Intervenor Denise Bensusan:

CENTER FOR LAW IN THE PUBLIC INTEREST

By: Mr. Timothy M. Hogan

202 E. McDowell Road, Suite 153

Phoenix, Arizona 85004

GARY W. HILL, R.P.R.

25 Certified Reporter No. 50812

1 CHMN. FOREMAN: Let's see if we can get started.
2 It's 8:30. My name is John Foreman. I'm the Chairman of
3 the Arizona Power Plant and Transmission Line Siting
4 Committee.

5 We're going to start this morning with a hearing
6 that was requested by Counsel in our Case Number 151 in
7 the matter of the application of Hualapai Valley Solar,
8 LLC.

9 We've done this on kind of an emergency basis at
10 the request of the Applicant. I issued a procedural order
11 and agenda last week in this matter. Let me ask Counsel
12 to enter an appearance.

13 MR. CAMPBELL: Thank you, Mr. Chairman. Tom
14 Campbell and Bert Acken of Lewis and Roca on behalf of the
15 Applicant, Hualapai Valley Solar. With me at the counsel
16 table is Mr. Greg Bartlett, the project director.

17 CHMN. FOREMAN: I've been approached by Tim
18 Hogan. Tim, do you want to make your appearance?

19 MR. HOGAN: Thank you. Tim Hogan with Arizona
20 Center for Law in the Public Interest, representing Denise
21 Bensusan, one of the proposed intervenors, for the limited
22 purpose of the intervention issue in this proceeding.

23 CHMN. FOREMAN: Okay. Mr. Hogan, have you filed
24 any kind of written pleading in this matter?

25 MR. HOGAN: No.

1 CHMN. FOREMAN: All right. My proposal would be
2 to ask the Applicant to see if there's anything they want
3 to amplify on what they filed, and then to ask you to say
4 anything you would like to on behalf of your client. And
5 then we can move on to try and decide. But we have a
6 limited amount of time, so we're going to proceed --

7 MR. HOGAN: Sure.

8 CHMN. FOREMAN: -- as expeditiously as we can.

9 Counsel, as I understand your pleading, you've
10 asked for two -- you've asked the Committee to do two
11 things. The first is to ratify the decision of the
12 Committee, which is not as yet final, with regard to the
13 CEC that was crafted, for want of a better term, on
14 January 13, 2010, in a hearing in this matter.

15 The second request for relief that you have
16 filed asks the Committee to rehear and, I guess, change
17 its decision not to allow two individuals, who had asked
18 to intervene, to intervene as parties in the proceeding.

19 Now, it appears to me that if we grant the
20 second request, the first becomes moot. Would you agree?

21 MR. CAMPBELL: Mr. Chairman, I think I do. I
22 think what happens if you were to grant the second
23 request, in a sense, there would be a new deliberation and
24 a new legal action taken by the Committee, as that term is
25 defined in the Open Meeting statute. So I believe that

1 does effectively moot the first issue.

2 CHMN. FOREMAN: Am I also correct in my
3 understanding, my memory of the hearing and my
4 understanding of the transcript that the Applicant at no
5 time indicated that the Committee had erred or should have
6 allowed the intervention of the two ladies?

7 MR. CAMPBELL: Mr. Chairman, that is correct. I
8 would, when I have a moment to, as you say, amplify my
9 filing, I would like to address that in more detail; but
10 that is a correct recollection of the hearing transcript.

11 CHMN. FOREMAN: And just before we get into your
12 amplification, can you articulate any prejudice to anyone,
13 or has anyone claimed any prejudice as a result of the
14 action of the Committee in denying intervention to the two
15 individuals?

16 MR. CAMPBELL: I believe -- I have several
17 thoughts on that, and let me address those now. I think
18 the record, the evidence in this record is pretty
19 complete; and in comparing what the two prospective
20 intervenors filed as exhibits and testimony they wanted to
21 produce and what was actually produced as witnesses, it
22 seems to me the record is pretty complete. There may be
23 some gaps, but I didn't notice them.

24 Clearly, the two intervenors believe there has
25 been prejudice. One issue, of course, is by not being

1 parties, they don't have a right to appeal. So I don't
2 know that they -- I don't remember whether they
3 specifically used the word "prejudice" in the proceeding
4 or in the transcript, but they obviously clearly thought
5 that they wanted to intervene and wanted to cross-examine.
6 So that would be the issue.

7 CHMN. FOREMAN: By appeal, you mean request for
8 review before the Commission?

9 MR. CAMPBELL: Both request for review before
10 the Commission, that requires a party, and I believe also
11 on the Commission order to file a request for rehearing at
12 the Commission, and then appeal to a Superior Court the
13 Commission's ruling, if the Commission were to affirm the
14 Committee certificate, you have to be a party. So at both
15 levels of appeal, Mr. Chairman.

16 CHMN. FOREMAN: All right. You are aware that
17 the Commission has reviewed on, I believe, at least 15
18 occasions actions by the Committee since October of 2000,
19 even though no request for review has been granted.

20 MR. CAMPBELL: Yes, Mr. Chairman, I understand
21 it is the Committee's -- excuse me, it is the Commission's
22 practice to review every CEC, whether a request for review
23 has been filed or not.

24 CHMN. FOREMAN: And do you have any reason to
25 believe that they would have deviated from that practice

1 in this case?

2 MR. CAMPBELL: I do not.

3 CHMN. FOREMAN: All right. Let me ask the
4 attorneys to make their statements, and then I want to get
5 into the Committee response.

6 MR. CAMPBELL: Thank you, Mr. Chairman. First
7 of all, let me start by thanking the Committee and the
8 Chairman for allowing us this somewhat extraordinary
9 opportunity to bring these two issues before you. I know
10 your schedules are busy and I certainly appreciate it, and
11 I'll try to be brief, but we do thank you for that.

12 We have two issues. The first one is the
13 ratification with respect to a potential Open Meeting
14 violation. I'm not going to spend much time talking about
15 that. I'll be happy to answer questions. I actually
16 think the Chairman in his procedural order captured that
17 quite well when he said after talking to the Attorney
18 General's office, Open Meeting Division, they said this
19 may just be a technical violation, but -- and these are
20 the words from the order -- "Applicant should not be
21 placed in the position of having to assume the risk that a
22 reviewing court would agree, and the request for
23 ratification appears to be a reasonable option for the
24 Committee to consider."

25 There is a process under the statute, and while

1 this, I think you can make a very reasonable argument, is
2 a technical violation, doesn't make the CEC null and void,
3 the Applicant would prefer not to run that risk as noted
4 by the Chairman in his procedural order, and that's why we
5 asked for ratification.

6 The more complicated issue, and the one I want
7 to talk about a little bit more, is the intervention
8 request, reconsideration request. And let me just take a
9 couple minutes on that, and I have given each of you a
10 three-page packet, stapled packet with a statute and two
11 rules, one from the Line Siting and one from the
12 Commission Rules for Practice and Procedure, and I want to
13 just review those briefly as part of my comments.

14 CHMN. FOREMAN: Mr. Campbell, as you do review
15 those, I note that you have appended a copy of the
16 Commission's rules on intervention in Commission
17 proceedings. You have not cited the Commission's rules
18 with regard to intervention in Line Siting proceedings.
19 Is it your assumption that the rules concerning general
20 hearings somehow take precedence over the rules concerning
21 Line Siting proceedings?

22 MR. CAMPBELL: No, it's not. As you will see in
23 a moment, my reason for appending the Commission rules on
24 intervention is to provide the Line Siting Committee the
25 perspective the Commissioners sometimes have in reviewing

1 this issue when we get to the Open Meeting. There is a
2 separate set of intervention rules for Line Siting, and
3 one that deals with the process which I didn't append here
4 because it's more procedural, and one that deals more with
5 what I consider the substance.

6 The first page on the sheet that I gave you is
7 from the statute, the Line Siting statute, ARS 40-360.05,
8 entitled Parties to Certification Proceedings. And it
9 says the parties to a certification proceedings shall
10 include, and they have four categories. The first three
11 are, we'll say, mandatory. The Applicant, certain
12 governmental entities, and then certain nonprofit
13 corporations and associations, primarily dealing with
14 environmental issues and other issues like that.

15 And then number 4 which says such other persons
16 as the Committee or hearing officer may at any time deem
17 appropriate.

18 So my first point is, I think under the Line
19 Siting statute, this Committee has discretion in
20 determining who else to grant intervention status to other
21 than those first three categories which are mandatory.

22 I have attached, just so that I try to give you
23 a full picture of arguments that have been made one way or
24 the other on this, the second page which is actually from
25 the Commission rules with respect to Line Siting, and that

1 is R14-3-202, also entitled Parties. It says, "Parties to
2 the proceedings before the Committee shall be designated
3 applicants or intervenors," and then Number 1 says the
4 person seeking a certificate is an applicant, and then it
5 says any other person having an interest in the proceeding
6 before the Committee shall be designated intervenor.

7 I read that rule as simply being a rule that
8 says here is what you're going to call people once you've
9 decided they're parties. Some people have made the
10 argument that somehow A.2 means if somebody has an
11 interest, they have to be made an intervenor.

12 I think that's inconsistent with the statute
13 which provides you discretion, and the statute would
14 control. I think the two can be read consistently if you
15 see that as ministerial.

16 Now, having said that about the discretion and
17 therefore getting back to the Chairman's question, no, in
18 a sense, legal basis for an objection. As I was thinking
19 about the Open Meeting and the Commission and reviewing
20 the transcript, two points struck me that I wanted to
21 bring back to you.

22 First of all, the Commission may very well want
23 to know why was intervention denied. And they have to
24 rely on the transcript for that. The transcript as it now
25 stands, as I reviewed it, doesn't really provide reasons

1 for the interventions being denied. You remember they
2 were denied for lack of a second on a motion, and then
3 there's quite a few pages of discussion after that about
4 what the Committee intends to do to make sure the parties
5 get a chance to be witnesses and questions they asked, the
6 Committee can try to follow up with. There's several
7 pages of that, but there's no real statement as to why the
8 interventions were denied; and I think when the
9 Commission, if the Commission were to ask that at the Open
10 Meeting -- and I think they might well ask that at the
11 Open Meeting -- there isn't anything in the record to
12 provide them that. So that was point number 1.

13 Point number 2, and this is why I have the third
14 piece of paper in the stack for you, and this is the
15 Commission rule, not from the Line Siting statutes, per
16 se, but from the Commission's Rules of Practice and
17 Procedure; and I provide this to you just to put in
18 context the way the Commissioners think about intervention
19 because of their experience in dealing with the statute.

20 It is Rule Number 14-3-105, and I'm not going to
21 read the whole rule. I just want to highlight two phrases
22 that tend to be the phrases the Commission and the
23 Administrative Law Judges at the Commission focus on when
24 they look at intervention.

25 The first phrase is in subcategory A which talks

1 about persons who are directly and substantially affected
2 by the proceedings; and then in B, there's language that
3 says, you know, leave to intervene shall be granted where
4 by doing -- it says no leave to intervene shall be granted
5 where by doing so the issues theretofore presented will be
6 unduly broadened. It says except upon leave of the
7 Commission. That's about in the third sentence of
8 subparagraph B.

9 So the Commission in their perspective and
10 experience, when they're dealing with intervention, thinks
11 in terms of this directly and substantially affected and
12 whether the intervention will unduly broaden. That's
13 their perspective.

14 The statute that I read to you before from the
15 Line Siting doesn't provide a particular standard, a
16 specific standard for intervention. But in thinking about
17 the Open Meeting and their review of the CEC, I believe it
18 is possible, number one, they'll think about it in those
19 terms, and number 2, that arguments may be made that in
20 light of the fact the Committee has discretion but no
21 specific standard for intervention in line siting, that a
22 fallback basis for analyzing intervention requests should
23 be the Commission's procedures.

24 CHMN. FOREMAN: Counsel, let me stop you there.
25 Do you believe that the Commission has the legal authority

1 to compel the intervention of those who have requested it?

2 MR. CAMPBELL: I think at the review, at the
3 Open Meeting under the statute, the Committee can affirm
4 the CEC, modify the CEC, or deny the CEC. I don't
5 think --

6 CHMN. FOREMAN: You mean the Commission?

7 MR. CAMPBELL: The Commission, I'm sorry. Did I
8 misunderstand your question?

9 CHMN. FOREMAN: No, you misstated, used the word
10 "Committee" instead of "Commission."

11 MR. CAMPBELL: First time today.

12 CHMN. FOREMAN: Well, luckily, I never make a
13 mistake.

14 MR. CAMPBELL: I think the Commission -- I think
15 the Commission under the statute has those three options.
16 Our concern is that if they believed there should have
17 been intervention, their only option would be to deny the
18 CEC and ask us to start again. It is clear --

19 CHMN. FOREMAN: What would be the legal
20 authority for that? To start again? I mean they can deny
21 the application.

22 MR. CAMPBELL: Well, the legal authority would
23 be there's nothing to prevent the Applicant from refiling
24 an application.

25 CHMN. FOREMAN: Oh, I see. I take your point.

1 MR. CAMPBELL: It's not a remand in the way that
2 we think about it in terms of appellate jurisdiction. I
3 guess they could suggest that, but it seems to us the
4 statute says they can do one of these three things.

5 CHMN. FOREMAN: Okay.

6 MR. CAMPBELL: From the Applicant's
7 perspective --and this is more a policy consideration, not
8 a legal -- when I said I didn't believe I had a legal
9 basis for objecting to your decision, I think you had the
10 discretion to make the decision you did.

11 From the Applicant's perspective, just a couple
12 points. One, we think it's a good project. Two, we think
13 the CEC contains the reasonable conditions that you
14 hammered out and should be approved. Three, I think the
15 evidentiary record is very complete in this case. Even
16 the intervenors who were denied intervention did testify
17 for quite a long time and provided a lot of materials.

18 We would hope if you reconsider intervention and
19 grant it, that obviously their presentations would be not
20 repetitive of what's already been presented and would be
21 material as the rules require.

22 Our perspective, however, is that because it's a
23 good project, because it's a reasonable CEC, we would like
24 to get building it. We don't want any cloud on the CEC.
25 And so that's why we brought this back to you.

1 It's obviously clearly a discretionary act on
2 your part as to whether you grant intervention or whether
3 you want to grant our motion. I would also say that while
4 that's our preference because, as you can understand, that
5 puts the CEC in the best posture for the Applicant, at a
6 minimum, we would request that if you choose not to
7 reconsider your decision on the intervention request, that
8 you would at least articulate the basis for denial on the
9 record so that when the Commission asks what was the
10 basis, there's something in the transcript that
11 articulates that basis.

12 CHMN. FOREMAN: All right. Let me see if I can
13 summarize my understanding of what you said. You agree
14 that the Committee made no legal error in denying the
15 applications to intervene, correct?

16 MR. CAMPBELL: Yes, I think the statute that I
17 read to you, 40-360.054, uses the word "may," which I read
18 to be discretionary for the Committee.

19 CHMN. FOREMAN: And you said that it was within
20 our discretion. Do you contend that we in any way abused
21 our discretion in denying the application?

22 MR. CAMPBELL: I haven't, you know, researched
23 abuse of discretion cases. I think that would certainly
24 be the argument that somebody would make.

25 CHMN. FOREMAN: Do you make it?

1 MR. CAMPBELL: I don't think you abused your
2 discretion.

3 CHMN. FOREMAN: That's all I wanted to know.
4 Thank you.

5 Mr. Hogan, let me ask you if -- and you have
6 indicated that you'll be filing something indicating that
7 you're representing Ms. Bensusan, one of the potential
8 intervenors; is that correct?

9 MR. HOGAN: Correct.

10 CHMN. FOREMAN: Do you contend, number one, that
11 the Committee made a legal error in failing to grant the
12 request to intervene, or if it had the discretion, whether
13 it abused its discretion in failing to allow them to
14 intervene?

15 MR. HOGAN: I think I'll be contending both in
16 front of the Commission.

17 CHMN. FOREMAN: Could you tell us what the legal
18 error was then, please?

19 MR. HOGAN: I think Ms. Bensusan had a right to
20 intervene under the Commission's overall rule applicable
21 to general proceedings as well as civil court rules.

22 CHMN. FOREMAN: Do you contend that either of
23 those take precedence over the statutory language that the
24 legislature prescribed for proceedings before the Line
25 Siting Committee?

1 MR. HOGAN: I don't think that language sets the
2 standard for intervention. I think it just reposit's some
3 discretion in the Committee to make a determination as to
4 intervention; and as you know, intervention can be
5 mandatory as a right or permissive. So there is some,
6 some species of discretion reposit'd in the Committee for
7 that purpose, but I don't think it's -- I think
8 Ms. Bensusan has a substantial direct interest in this
9 proceeding and had a right to intervene.

10 CHMN. FOREMAN: All right.

11 MR. HOGAN: So, if that's true, then that issue
12 is reviewed de novo, I believe. If it's a permissive
13 intervention issue where it's discretionary with the
14 Committee, then it's an abuse of discretion standard of
15 review.

16 CHMN. FOREMAN: And how is it the Committee
17 abused its discretion?

18 MR. HOGAN: Well, for one thing, there's no
19 explanation whatsoever about why intervention was not
20 granted.

21 CHMN. FOREMAN: Is there anything else you would
22 like to tell us?

23 MR. HOGAN: Well, except that I think it's
24 apparent from the record what Ms. Bensusan's interest is.
25 She lives relatively close to the property, has a well

1 that draws from the same source. Mr. Campbell pointed out
2 the benefits of intervention include the ability to
3 cross-examine, produce her own witnesses, seek review from
4 the Commission, and seek judicial review if she feels it's
5 appropriate.

6 CHMN. FOREMAN: Is there any evidence, any
7 material for the record that she contends she wanted to
8 get into the proceeding that she was not allowed to
9 present to the Committee?

10 MR. HOGAN: I think there is. I think she
11 indicated on the record she wanted to cross-examine the
12 county witnesses who provided sworn testimony. I think
13 she also provided a list of witnesses, if I'm correct,
14 about people she intended to either call voluntarily or
15 subpoena to testify.

16 CHMN. FOREMAN: How long do you believe her case
17 presentation would have lasted had she gotten what she
18 wanted?

19 MR. HOGAN: I don't know the answer to that.

20 CHMN. FOREMAN: Okay. Is there anything else
21 you would like to tell us, sir?

22 MR. HOGAN: No, thank you.

23 CHMN. FOREMAN: All right. Members of the
24 Committee, I think we need to --

25 MEMBER HOUTZ: I have some clarification

1 questions.

2 CHMN. FOREMAN: Sure, Member Houtz.

3 MEMBER HOUTZ: I would direct this at either
4 counsel. Is the prehearing conference, the transcript,
5 part of the record that goes before the Commission?

6 MR. CAMPBELL: The prehearing transcript is
7 filed in the docket -- in this docket in the record. It's
8 not an evidentiary proceeding, but the transcript itself
9 is part of the record.

10 MR. HOUTZ: Because what I remember from
11 reading -- I did not attend the prehearing conference. I
12 usually don't. But I do try to read them, and what I
13 noticed is that the Committee in interventions has its own
14 set of deadlines and requirements for potential
15 intervenors, which it was apart from reading the
16 transcript, Ms. Bensusan and Ms. Bayer, neither one of
17 them met any of the timeliness requirements, and the
18 Chairman and the Applicant agreed to extend deadlines to
19 allow them to submit a list of witnesses. I'm just making
20 that as a statement. That's not a question. But that's
21 things that I think are in the record.

22 I'll pose this -- the ex parte rule applies to
23 the applicant clearly after the application is filed.
24 What is the application of the ex parte rule to
25 intervening parties?

1 MR. CAMPBELL: I could look it up, but let me
2 try to do this from memory. The ex parte rule applies to
3 all parties to a proceeding, and I think the Commission
4 has been pretty careful to take the position that they
5 don't talk to anybody, even third parties -- and let me
6 find the rule so I can read it. Prohibitions. This is
7 from -- just so the record is clear, this is from the
8 R14-3-220, Unauthorized Communications. This is in the
9 Commission rules, and this is actually in the Line Siting
10 portion of the rules. And it says under Prohibitions,
11 Category C.1, "No person shall make or cause to be made an
12 oral or written communication, not on the public record,
13 concerning the substantive merits of siting hearing to
14 member of the Siting Committee involved in the
15 decision-making process for that siting hearing."

16 So it actually applies to anybody, that they're
17 not supposed to talk to the siting members on a
18 substantive question.

19 MR. HOUTZ: Okay. Clearly we did not make a
20 record of denial of the intervention. However, I do
21 believe -- and I'll state this for the first time --
22 Ms. Bensusan violated the ex parte rule and intended on
23 her witness list to call a Committee member as a witness.
24 And she stated that again during the hearing, that she was
25 going to call Herb Gunther, Director of Arizona Department

1 of Water Resources, which she seemed to be unaware was a
2 member of this Committee, the Director or his designee.
3 And I know, from my own personal knowledge, that as
4 recently as a week before the prehearing conference,
5 Ms. Bensusan had had personal conversations with the
6 Director. I'm troubled by that. I'm not necessarily
7 saying it's against the intervention, but I'm wondering
8 what protections the Committee and the Commission need to
9 have about the ex parte rules and the need to have an
10 orderly process for intervention.

11 It seemed to me from reading the prehearing
12 conference, Ms. Bensusan did not do any of her homework
13 about what was going to be required of her. I had no
14 desire to make a motion to grant the intervention. I did
15 not have a desire to make a second of the motion. I don't
16 know how I would have voted if there had been a motion and
17 a second. But I'm concerned about some of the things that
18 were happening.

19 While I'm on my soapbox, going to your first
20 point, while there may be a technical violation, I was the
21 one that told the Chairman to make some kind of
22 announcement about recordings, because there was a person,
23 personally known to me, who has privately recorded
24 meetings at the Department of Water Resources, and I just
25 wanted notice of whether anybody was recording. We may

1 have gone a little overboard on that. But there was a
2 known person, not a potential intervenor, but just a
3 public person who tends to record meetings. He also
4 researches people on the Internet and then sends them
5 strange letters. But --

6 CHMN. FOREMAN: That was my error. I regret it.
7 It's inconsistent with statements that I've made before,
8 and I regret that I've put the Committee in the position
9 of having to go through this process.

10 But are there other comments concerning the
11 request for relief? Member Eberhart?

12 MEMBER EBERHART: Thank you, Mr. Chairman.
13 Mr. Campbell, I'm not an attorney, so please bear with me.
14 But it seems to me that the Committee has completed its
15 work on this case. To your knowledge, are there previous
16 examples where a CEC has been approved by this Committee
17 and then the Committee has come back two weeks later and
18 reopened the case?

19 MR. CAMPBELL: Mr. Chairman, Mr. Eberhart, there
20 is at least one case where the Committee did a
21 ratification vote -- I believe it was in a Coolidge
22 case -- where actually the CEC was actually signed and
23 filed with the Commission.

24 Our position, just to maybe amplify my answer to
25 your question, Mr. Eberhart, our position is that the

1 Committee's decision doesn't issue a CEC until it does so
2 in writing, signed and filed with the Commission. The
3 time periods for, for instance, requests for review, for
4 the Commission to act, all run from the time a written
5 decision is filed with the Commission, which hasn't been
6 done yet in this case.

7 However, in the Coolidge case, such a written
8 decision was filed, and the Committee subsequently held a
9 second hearing which was a ratification hearing. And
10 beyond that, Mr. Eberhart, from my memory, I can't
11 remember a case that's precisely like this one with this
12 particular issue; but I do know the Committee has after
13 filing a CEC in the Coolidge -- I'm saying the Coolidge
14 case. That's not the precise name for it, but it was a
15 recent case involving some gas plants in the Coolidge
16 area, where they did a ratification vote after the CEC was
17 filed, signed and filed with the Commission.

18 MEMBER EBERHART: I think more to my question, I
19 understand the ratification proposal. But I'm trying to
20 quantify in my mind how we would go about reopening the
21 case and hearing more evidence.

22 MR. CAMPBELL: Mr. Chairman, Mr. Eberhart, thank
23 you. Let me address that question. I didn't focus on
24 that specifically. I think that in this case, the
25 Commission would have to decide on a subsequent hearing

1 date -- the Committee. Second mistake. Mr. Acken keeps a
2 record for me. He actually has a record he shares with
3 everybody at the firm, apparently.

4 That there would be a necessary Open Meeting
5 agenda to establish a new hearing date, and at that time
6 they would reopen the record, so to speak, to rule on the
7 intervention request or actually allow any additional
8 evidence. There would then be a new deliberation and
9 vote, which is why, as Chairman Foreman pointed out, that
10 takes care of the ratification issue because there's a new
11 legal action as opposed to the prior legal action.

12 So I think with proper notice, in terms of Open
13 Meeting notice and perhaps procedural order here, and
14 because the order has not been -- the CEC has not been
15 issued as the term "issued" is used under the rules
16 because it hasn't been signed and filed, that that would
17 be an appropriate procedure, and that's the way it would
18 work out.

19 MEMBER EBERHART: Mr. Campbell, would the
20 Committee conduct additional hearings in the Phoenix area
21 or in Kingman?

22 MR. CAMPBELL: Mr. Chairman, Mr. Eberhart, the
23 statute or the rules say that hearings can be conducted
24 either at the State capital in Phoenix or in the vicinity
25 of the project. Now, the Committee's practice has been to

1 interpret that as meaning in Phoenix, Phoenix being the
2 state capital of Arizona. You can have hearings either in
3 Phoenix or in the vicinity of the project. And as you
4 know, you've done both. You've sometimes started in the
5 vicinity and then moved subsequent hearing dates to
6 Phoenix.

7 We did do a little research in case someone were
8 to ever read that statute to say State capital means
9 literally at the State Capitol, not within Phoenix, but at
10 the State Capitol there is actually space that you can
11 rent at the State Capitol to hold such a hearing. But
12 that's the answer to your question.

13 Definitely at the State capital in Phoenix, the
14 practice of this Committee has been to interpret that rule
15 as being within Phoenix.

16 MEMBER EBERHART: Given that, is this hearing
17 today complying with the statute?

18 MR. CAMPBELL: This is not an evidentiary
19 hearing. It's a hearing on a procedural motion, somewhat
20 like a prehearing conference or other procedural motions
21 that the Chairman can have and properly noticed under the
22 Open Meeting statute.

23 MEMBER EBERHART: Mr. Hogan, what would
24 Ms. Bensusan's preference be as far as if there was an
25 additional hearing as far as the location?

1 MR. HOGAN: Her clear preference would be to
2 have the reconvened hearing in Kingman.

3 MEMBER EBERHART: And Mr. Hogan, is there any
4 response to Committee Member Houtz' discussion with regard
5 to the timeliness or lack thereof as far as Ms. Bensusan's
6 producing witness lists, et cetera?

7 MR. HOGAN: Well, I don't know that the
8 Applicant has claimed any harm or prejudice as a result of
9 any violation of any timeliness requirements. I guess I
10 would point out an overall problem here, which is if my
11 recollection serves, I think the application to intervene
12 was filed December 22 or thereabouts, and the prehearing
13 conference was scheduled for January 4 or thereabouts.
14 People who file -- I may have those off by -- people who
15 file, citizens who file for intervention are in limbo.
16 They're not a party and certainly can't be bound by the
17 requirements when they're not even a party to the
18 proceeding, and they're being told that you won't know
19 whether you're a party to the proceeding until the
20 Committee convenes on the first day of the hearing.

21 I mean if there's any prejudice, it's to the
22 citizen intervenor who goes to the first day of the
23 hearing not knowing whether or not they're going to be
24 allowed to participate. I don't know how you can prepare
25 under those circumstances. And whether it's fair to

1 require intervenors to subpoena witnesses, for example,
2 when it may be totally unnecessary and a waste of time and
3 money.

4 So the procedure -- I don't think the procedure
5 fosters the kind of timeliness that we're talking about
6 here. And I'm not sure she could be held to that standard
7 anyway since she wasn't ever a party. So --

8 MEMBER EBERHART: Thank you.

9 CHMN. FOREMAN: Are there any other -- Member
10 Palmer?

11 MEMBER PALMER: Thank you, Mr. Chairman. This
12 Committee and the evidentiary process was conceived and
13 authorized by the legislature almost 30 years ago, and the
14 intent was to create a mechanism by which conditions are
15 imposed on the siting of power plants and transmission
16 lines that would mitigate environmental impact; and our
17 task was to gather as much information as possible to
18 achieve that objective.

19 This Committee is comprised of five former
20 legislators, five attorneys. It's a distinguished body,
21 certainly able to perform that task.

22 The reason that the nonattorney pro per
23 intervenors were not granted status really relates to what
24 is to be accomplished from that. When they were given
25 limited appearance status, they were able to testify and

1 really add to the proceedings a perspective that was
2 unique to them.

3 We have enough folks here on this panel, on this
4 Committee to act as cross-examiners on witnesses from the
5 Applicant and from any other intervenors. So by not
6 seconding the motion, I acknowledged that I thought we
7 were going to achieve the objective of the legislature
8 when this was conceived, and that was to maximize flow of
9 information. And that the proceedings would likely be
10 protracted unnecessarily by unskilled nonattorney pro per
11 intervenors.

12 We've had some negative experiences with that in
13 the past, and the consequence has been the proceedings
14 were protracted. There was unnecessary animosity. It
15 didn't accomplish the original legislative intent.

16 So I chose not to second the motion because I
17 didn't see an advantage that we would gain other than the
18 fact that we already granted them limited appearance
19 status which gave them the opportunity to testify and be
20 on the record. And I thought that was sufficient.

21 If we set a precedent where we're going to allow
22 anybody to be a nonattorney pro per intervenor, these
23 proceedings could be protracted into weeks and months in
24 some cases. And I don't think that accomplishes the
25 objective of the legislature.

1 CHMN. FOREMAN: Member Rasmussen.

2 MEMBER RASMUSSEN: As a follow-up to Member
3 Palmer's comments, I would like to point out that indeed
4 the two women who were asking for intervenor status were
5 given full opportunity before any votes were taken on the
6 CEC to express their concerns, to articulate them fully
7 after a very robust and detailed discussion had taken
8 place on the merits of the case. There was no, either
9 misdirection or interruption in terms of their ability to
10 put their best information forward.

11 As Mr. Palmer said, if this sets a precedent for
12 any citizen concerned with a project to intervene, the
13 practicality of these hearings just may be very badly
14 disturbed. They have to be done in a timely and careful,
15 yet comprehensive way. I thought and still think that
16 that was achieved in our hearings in Kingman.

17 And so then in a practical sense, I think all of
18 the facts were laid out before this panel, and they were
19 fully considered when we took the votes that we did.

20 MEMBER YOULE: Mr. Chairman.

21 CHMN. FOREMAN: Member Youle.

22 MEMBER YOULE: I agree with what's been said
23 previously by the other members of this Committee. I also
24 am extremely troubled with the concept that every citizen
25 should have, has party status of right. It seems to me

1 even from a statutory construction perspective, that would
2 totally negate the necessity to have a section like
3 40-360.05. So you might as well be voiding this entire
4 statute.

5 So I have trouble with it being -- I believe the
6 statute is clear, that it is discretionary action by the
7 Committee; and to have otherwise, as I say, would be
8 repealing the statute.

9 CHMN. FOREMAN: Member Wong.

10 MEMBER WONG: Yes, thank you, Mr. Chairman. I
11 just want to make -- I would like to have a clarification.
12 The Applicant is making a request, a motion, is that
13 correct, Mr. Campbell, to reopen the application
14 specifically for ratification of the CEC that was approved
15 by this Committee in Kingman; is that correct?

16 MR. CAMPBELL: Mr. Chairman, Member Wong, yes,
17 in a sense, while we've had it in one pleading, there are
18 two requests. One is a ratification request. I don't
19 know if that constitutes reopening the record, which is
20 why I'm answering the question separately, so much as
21 following the statute on ratification. The second
22 request, which is to reconsider the intervention, would
23 require reopening the record, yes.

24 CHMN. FOREMAN: There is no procedural vehicle
25 for rehearing or reopening that is articulated in the

1 statute or the rules. So even hearing this is a matter of
2 discretion with the Committee; and because the Committee
3 makes the decision with regard to intervention, I felt
4 it's a decision that the Committee, and not the Chair
5 alone, should make.

6 MEMBER WONG: Mr. Chairman, we will then take a
7 vote, is that the next step, after we fully discuss this?

8 CHMN. FOREMAN: Well, if a motion is made to
9 grant relief, we'll vote on it, yes.

10 MEMBER WONG: Let me just make a comment, if I
11 may, Mr. Chairman. I'm troubled by the Applicant's timing
12 of this, especially when it comes to the intervenor issue,
13 because this issue would not have come up unless the
14 Applicant felt this was an issue that may cloud, as
15 Applicant used the term "cloud," the CEC.

16 The underlying issue is the rights of the
17 intervenors, proposed intervenors, Ms. Bayer and
18 Ms. Bensusan, at the time in Kingman. I did make the
19 motion to grant them intervenor status. I felt at the
20 time that they took the steps to comply with the
21 Committee's rules to become intervenors, and they took
22 time and effort to prepare as intervenors.

23 This was not a large number of people, citizens
24 in the area, in the Kingman area, the project area that
25 was applying. These were just two specific individuals.

1 And I made the motion to err on the side of the public for
2 full participation, full disclosure, and specifically with
3 those two particular intervenors.

4 Having said that, my motion was denied, failed
5 for lack of a second. So then the Chair took a step to
6 give a privileged position, that being a limited party
7 status, to both Ms. Bayer and Ms. Bensusan, which elevated
8 them to a higher status in participation than the general
9 public for participation. So they did have a full
10 vetting, at least from a testimony point of view,
11 presenting their evidence.

12 And I did state at the time after the motion was
13 denied, failed for lack of a second, that they could ask
14 questions or present their evidence, and then the
15 Committee members could then ask questions to the
16 witnesses.

17 So I think there was a full vetting of the
18 witnesses. I felt comfortable following the denial of
19 intervention motion that there was a very detailed
20 cross-examination of all the witnesses. I felt I did
21 that. I think many of the Members here articulated that
22 they felt they did the same.

23 So I'm not sure how much more information we
24 could glean from additional testimony and
25 cross-examination from, in this case, Ms. Bensusan. So

1 even though at the time I think it would have been fair to
2 include them as intervenors, I think now after the fact,
3 I'm not sure how much more information we can receive.

4 However, if this Committee decides to reopen and
5 grant the Applicant's request and grant intervenor status,
6 if it comes to that, then I think we need to have the
7 hearing in Kingman to minimize any type of hardship to the
8 intervenor and the witnesses that she may proffer. So I
9 just want to make that statement for the record.

10 Mr. Chairman, thank you.

11 CHMN. FOREMAN: Member Eberhart.

12 MEMBER EBERHART: Thank you. Just a couple
13 quick things. I don't recall, probably because I got to
14 the meeting late and did not personally see or hear the
15 testimony of the county supervisor and the mayor, I think
16 Mr. Hogan stated on the record this morning that their
17 testimony was sworn testimony, and I wanted to make sure
18 that that was an accurate statement.

19 CHMN. FOREMAN: It was.

20 MEMBER EBERHART: Were they sworn in?

21 CHMN. FOREMAN: They came up for public comment.
22 Because what they were saying was of significant
23 importance, I asked if they would be willing to be sworn.
24 They agreed. They were sworn, and they were subject to
25 cross-examination.

1 MEMBER EBERHART: Thank you. I just wanted to
2 clarify that for the record. Also, Mr. Wong, did you feel
3 that the two -- they weren't intervenors, but the two
4 parties that were denied intervention, did not have an
5 opportunity to present anything that they should have been
6 able to present?

7 MEMBER WONG: To answer that question, I believe
8 that Ms. Bayer and Ms. Bensusan when they were granted
9 the -- help me, Mr. Chairman, with the status -- limited
10 appearance?

11 CHMN. FOREMAN: Well, it was not a limited
12 appearance. What I did was I exercised discretion to call
13 them as witnesses and allow them to put into the record
14 and testify under oath and be subject to
15 cross-examination, what they thought was important for the
16 Committee to hear; and I asked each specifically, advised
17 each specifically that that was what was involved, and
18 asked each if they had anything further to say.

19 MEMBER WONG: Yes, in response to Member
20 Eberhart's question, I felt both Ms. Bayer and
21 Ms. Bensusan were granted the privilege by this Committee
22 to present their evidence. I don't recall that this
23 Committee ever stopped them from presenting evidence if
24 they had more evidence or that we limited the amount of
25 time. If anybody has a different recollection -- I felt

1 that it was thorough. I think they had a lot of
2 information to present. They had information they did
3 present that I think some of the Committee members didn't
4 think it was relevant, but they were still permitted to
5 present the information. And I didn't hear any one of
6 them protest that they were cut short of their time. If
7 they felt that way, I didn't hear that.

8 But maybe Mr. Hogan, if your client felt
9 otherwise, maybe you should express that to us, if she
10 felt that she was not granted a fair opportunity to
11 present all the information that she thought was important
12 to this Committee.

13 MEMBER EBERHART: Thank you, Mr. Wong. I felt
14 the same way. My impression was that they were allowed a
15 significant amount of time to present the information they
16 had. I don't believe they were cut short. I think that,
17 as you said, the Committee asked a significant amount of
18 questions of the Applicant, and I think we established a
19 thorough record of the project.

20 So I agree with you that I think that there was
21 little more that could have been added that would have
22 been significant on the record. Thank you.

23 CHMN. FOREMAN: Member Whalen.

24 MEMBER WHALEN: Question for you, Mr. Campbell.
25 In reference to your request, let me see if I understand

1 totally what you're asking. You're asking that we reopen
2 and reaffirm. Does that mean that we then make part of
3 the record the justification for denial for intervention
4 at that time? Is that what you're asking in us opening
5 the record and reaffirming?

6 MR. CAMPBELL: Mr. Chairman, Mr. Whalen, I think
7 with respect to -- and again, let me differentiate between
8 our two requests. There's a ratification request, and now
9 we're talking about the intervention reconsideration
10 request.

11 With respect to the last part of your question
12 about providing a record of the reason for the denial of
13 intervention, I actually think that can be done as part of
14 this proceeding. In other words, it's being transcribed.
15 I just wanted the Commission to have some understanding in
16 a transcript they could read as to the decision. So I
17 don't think we would have to reopen the evidentiary record
18 for that piece.

19 However, in granting the intervention request,
20 which is that part of our motion, you would have to reopen
21 the record, because then you would be taking new evidence.
22 It wouldn't be the Committee explaining a procedural
23 decision like you do in prehearing conferences and
24 procedural conferences. You would actually be taking new
25 evidence, and then you would have to reopen the

1 evidentiary record. Does that address your question,
2 Mr. Whalen?

3 MEMBER WHALEN: It does, but you're still asking
4 two questions. You're asking us to ratify, and then
5 you're asking us to explain the reasoning here why we did
6 not allow intervention.

7 Is the bottom line that you really want us to
8 set aside the decision, reopen, and allow intervention?

9 MR. CAMPBELL: Well, allowing intervention
10 eliminates all procedural potential objections to the CEC.
11 So I guess from the Applicant's standpoint, that might be
12 the safest course, because, the phrase I used was it
13 eliminates that cloud; and then as I indicated in my
14 opening comments, at a minimum, the explanation, if you
15 decide not to reconsider and reopen, an explanation for
16 the reasons for doing so would be helpful because, as I
17 indicated before, the Commission has to make a decision on
18 this ultimately which is to affirm, modify or deny. And
19 that's why in looking at the transcript, I felt that we
20 needed to come back and talk about this particular issue.

21 MEMBER WHALEN: Did you bring about this request
22 through your own volition, or was there someone else who
23 asked you to bring this forward, other than the Applicant?

24 MR. CAMPBELL: Mr. Whalen, the ultimate decision
25 to bring the application was obviously made by the client

1 in consultation with me. I did have conversations prior
2 to bringing the application, both with Mr. Hogan
3 telephonically and also had a conversation with the Chief
4 Legal Counsel of the Arizona Corporation Commission.

5 MEMBER WHALEN: Are you able to relate any of
6 those conversations to this Committee?

7 MR. CAMPBELL: Well, I think Mr. Hogan has
8 stated his position. I don't think there was anything in
9 our conversations with Mr. Hogan that were any different
10 than what he's already said to you on the record.

11 The Chief Legal Counsel was the person who
12 pointed out to me the Open Meeting issue, and also we
13 discussed what I've already laid out to you, the fact that
14 the Commissioners will probably want to discuss the
15 intervention, will want to understand it.

16 MEMBER WHALEN: Thank you, Mr. Campbell.

17 CHMN. FOREMAN: Let me see if I understand. So
18 you had a conversation with Ms. Alward about not only the
19 Open Meetings issue, but the intervention issue; is that
20 true?

21 MR. CAMPBELL: That's right. Actually, to be
22 precise, I called her on another case, and at the end of
23 that conversation, she raised these issues.

24 CHMN. FOREMAN: And did she advise you what the
25 preference was of the Commission or members of the --

1 MR. CAMPBELL: No, she specifically said she had
2 not discussed the matter with the Commission. She was, in
3 a sense, just raising legal issues for me to consider.

4 CHMN. FOREMAN: Okay.

5 MEMBER WONG: Mr. Chairman.

6 CHMN. FOREMAN: I think I ought to put my two
7 cents worth in here, too. Dealing with unrepresented pro
8 pers is very difficult from the point of view of trying to
9 ensure the fairness of a proceeding. And I have had a few
10 years experience doing that in another forum.

11 I was prepared to proceed with Ms. Bensusan and
12 Ms. Bayer as pro per parties in this proceeding, even
13 though they had, I'll say, varying degrees of compliance
14 with the pretrial orders that had been entered. And they
15 were provided a copy of those pretrial orders well before
16 the prehearing conference, and they were advised that they
17 would be required to comply with them.

18 The present statutory scheme and rules are not
19 well designed to allow the sort of public input that they
20 have in mind. In fact, they're very, very difficult to
21 use, and it puts a tremendous pressure, it creates
22 terrific problems, not only for the Chair of the
23 Committee, but the Committee members in trying to deal
24 with the strict time limits that the legislature imposed,
25 trying to be thorough in its actions, and trying to be

1 fair.

2 Quite frankly, some of the material that is
3 presented by pro per potential intervenors can be helpful.
4 A lot is not. Some of it is very destructive of the
5 positive atmosphere that you try to generate in a
6 proceeding like this, which is not supposed to be strictly
7 adversarial.

8 In any event, I could have gone either way with
9 the Committee's decision about allowing the two potential
10 intervenors. When they were not allowed intervention, I
11 tried to craft a compromise that would allow them to put
12 into the record what they wanted to put into the record
13 without unduly delaying or making unduly burdensome their
14 presentation.

15 It was a compromise position, and my
16 understanding at the time was that both of them had put
17 basically into the record everything that they thought was
18 appropriate for the Committee to consider in making its
19 decision.

20 I am concerned, however, with the idea that
21 after the Committee has made its decision, that the
22 Committee can be compelled to go back and reopen; and I
23 would have to disagree quite strongly with Mr. Hogan's
24 legal position here that anyone has the right to intervene
25 in these proceedings. If that is true, where is the

1 limit? Is it a dozen people? Is it a hundred people?
2 The law cannot be that the Committee is powerless to
3 prevent anyone who wants to come in and rage about the
4 international Communist conspiracy, about little green men
5 appearing in their backyard, that the Committee would be
6 unable to prevent testimony and presentations like that.
7 Those are extreme examples; but if we start down that
8 road, that's the direction we're going to end up.

9 And I think the legislature gave the Committee
10 the discretion to control intervention from members of the
11 public for a reason.

12 I do not think that the legislature contemplated
13 that there would be unrepresented individuals from the
14 public that would want to be intervenors.

15 So from a procedural point of view, I am
16 troubled with the idea that we made no legal error when we
17 denied intervention; we did not abuse our discretion when
18 we denied intervention, but that we would now be required
19 to go back and reopen and basically turn the floor over to
20 whoever wants to appear and present whatever they want to
21 present in this proceeding. And I think that's the
22 alternative that we're faced with.

23 So for that reason, I, as I said, would be
24 concerned about granting the second request for relief
25 made by the Applicant. The first request for relief, it

1 seems to me, is well-taken. I regret what I said. It was
2 inconsistent with what I've said before. Ratification is
3 a reasonable response. I think we just need to find the
4 time and the place that we can do that. If we're just
5 going to ratify, I do not see any reason why we can't
6 ratify it consistent with prior precedent going all the
7 way back to the beginning of the Committee's activity, if
8 you're in Maricopa County.

9 MR. HOGAN: Mr. Chairman, could I make a
10 comment?

11 CHMN. FOREMAN: All right. We're past the time
12 that we had --

13 MR. HOGAN: It will be very brief.

14 CHMN. FOREMAN: All right.

15 MR. HOGAN: I just want to make sure the record
16 is clear about this. I don't believe I've ever said every
17 citizen should be entitled to intervene in these
18 proceedings.

19 I said there is a standard, and it's a person
20 who has a direct and substantial interest. I don't know
21 about Ms. Bayer. I don't represent her. I don't know if
22 she has a direct and substantial interest. But I do know
23 about --

24 CHMN. FOREMAN: How many people in the Kingman
25 area have a direct and substantial interest in this

1 project, sir?

2 MR. HOGAN: I don't know. I know of only one
3 that proposed to intervene.

4 CHMN. FOREMAN: Okay. Thank you.

5 MR. HOGAN: Well, let me, I mean --

6 CHMN. FOREMAN: Mr. Hogan, please. You've had
7 an opportunity to present your position. I think it's on
8 the record. Are you wanting to --

9 MR. HOGAN: Well, I thought it was on the
10 record, but I've heard from two Committee members who seem
11 to have misunderstood it. Thank you, Your Honor.

12 MEMBER WONG: Mr. Chairman.

13 CHMN. FOREMAN: Member Wong.

14 MEMBER WONG: I want to comment further about
15 the intervention process for citizens, just in general. I
16 think -- you know, we don't have a clear rule. In this
17 instance of this particular case, the Applicant, Hualapai
18 Solar, Ms. Bensusan and Ms. Bayer took the steps in the
19 prehearing conference to give the Committee notice of
20 their interest to become intervenors. But are they
21 informed in advance of the first meeting of the Committee
22 of the standard upon which the Committee determines who is
23 an appropriate party for intervention? Are they given
24 notice that they need to prove and establish that they
25 meet that standard as well?

1 CHMN. FOREMAN: Well, they are -- in this case,
2 I believe one or both of these ladies made inquiry to the
3 Corporation Commission. My recollection is that the
4 Corporation Commission sent both to Tara Williams who
5 assists me. I asked her to send to both of them the
6 procedural order that had been entered in the case, and
7 told them that if they wanted to become parties, they
8 needed to be ready to comply with that procedural order.
9 That was done well before the prehearing conference, and
10 they were invited to and did attend the prehearing
11 conference before they became parties.

12 MEMBER WONG: What I'm getting at, Mr. Chairman,
13 is that the two ladies, Ms. Bayer and Ms. Bensusan, is
14 that they're nonlawyers, lay persons, and are they
15 expected to have done this level of detailed research as
16 Mr. Campbell just presented?

17 CHMN. FOREMAN: Well, the rules with regard to
18 the practice of law in an administrative proceeding -- and
19 this is the practice of law in an administrative
20 proceeding -- is a person may represent themselves, but
21 they're not supposed to be granted any special status, and
22 the person who is acting as the Administrative Law Judge
23 or hearing officer is not supposed to give them any
24 special break.

25 Well, the truth of the matter is -- and I've

1 tried a number of cases in my former life as a judge, and
2 I've now had the opportunity to try and deal with pro per
3 intervenors in several of these cases. The truth is you
4 can't hold them to exactly the same standards because they
5 simply don't know where the law is. So the best you can
6 do is try and show them where the laws are found and try
7 and explain to them, to the extent that you can, what
8 standard they're going to be held to, and then beyond
9 that, hold them to that standard.

10 Now, as has been -- and let me distinguish
11 between Ms. Bayer, who had training as a paralegal, and
12 Ms. Bensusan. Ms. Bayer was much more compliant with the
13 rules than Ms. Bensusan, but Ms. Bensusan was certainly no
14 worse than other pro per applicants have been.

15 So I again was trying to find a way to be fair
16 to the Applicant, to be fair to the Committee, to be fair
17 to the community in which the hearing was going to be
18 held, and at the same time require that there be certain
19 standards of practice adhered to.

20 So it would be nice if there were standards that
21 are articulated in the statute and the rules, and there
22 aren't.

23 MEMBER WONG: Mr. Chairman, I just wanted to
24 make the statement that I don't think we should have a
25 blanket generalization that citizens should be precluded

1 if they -- if there's some nexus to this project. The
2 question always becomes, what is the nexus? How direct or
3 tangential is their interest? I don't want to have this
4 message sent to the community that discourages lay persons
5 from even trying to be intervenors because of the
6 potential, the track record of this Committee to reject
7 lay person intervenors' requests.

8 And I think it's better as a public forum to err
9 on the side of intervention so that we have the most
10 information, albeit that they may not be the most
11 articulate or the most efficient in presenting their cases
12 or cross-examination; but I think this process is not --
13 we don't hold the rules, like the courtroom, rules of
14 evidence. We're a little more relaxed than a court or
15 even some administrative hearings.

16 So I think we need to give some latitude to lay
17 persons that are not as artful as attorneys or even
18 paralegals or other experienced lay persons. I just want
19 to put that for the record.

20 CHMN. FOREMAN: Very good. Member Eberhart.

21 MEMBER EBERHART: Mr. Chair, in order to maybe
22 try and herd this thing to closure this morning, would a
23 motion to ratify the previous decision of the Committee
24 for granting the CEC as drafted previously, would a motion
25 like that be in order at this point?

1 CHMN. FOREMAN: Well, I think a motion to set a
2 ratification hearing and ratify would be appropriate,
3 would be in order. We cannot do the ratification today.
4 The time -- there is a strict requirement for notice that
5 we just weren't able to meet because of the time limits.

6 MEMBER EBERHART: Thank you. I would like to
7 make that motion then to set a future date to ratify.

8 MEMBER PALMER: Second.

9 CHMN. FOREMAN: We have a motion by Member
10 Eberhart, second by Member Palmer, to set a hearing to
11 ratify the decision in Case Number 151.

12 Is there further discussion? Member Whalen.

13 MEMBER WHALEN: Just a question, Mr. Chair.
14 Will we then further discuss the issue of intervention at
15 that hearing?

16 CHMN. FOREMAN: No.

17 MEMBER WHALEN: We will solve that today?

18 CHMN. FOREMAN: My hope is that we solve it
19 today. Let's either --

20 MEMBER WHALEN: Okay, thank you.

21 CHMN. FOREMAN: All right. I think it would be
22 appropriate for us to have a roll call vote unless there
23 is an objection. Member Eberhart?

24 MEMBER EBERHART: Aye.

25 CHMN. FOREMAN: Member Houtz?

1 MR. HOUTZ: Aye.

2 CHMN. FOREMAN: Member McGuire.

3 MEMBER MCGUIRE: Aye.

4 CHMN. FOREMAN: Member Mundell is not with us
5 today. His wife is having surgery. Member Noland.

6 MEMBER NOLAND: Aye.

7 CHMN. FOREMAN: Member Palmer.

8 MEMBER PALMER: Aye.

9 CHMN. FOREMAN: Member Rasmussen.

10 MEMBER RASMUSSEN: Aye.

11 CHMN. FOREMAN: Member Whalen.

12 MEMBER WHALEN: Aye.

13 CHMN. FOREMAN: Member Wong.

14 MEMBER WONG: Aye.

15 CHMN. FOREMAN: Member Youle.

16 MEMBER YOULE: Aye.

17 CHMN. FOREMAN: The Chair votes aye, so by a
18 vote of ten to zero, it's ordered that we'll schedule a
19 ratification hearing.

20 Please contact Tara Williams of our office so
21 that a hearing can be scheduled. It appears to me that
22 the week of, I think it's the 7th of February is going to
23 be the week that we're going to have to try to get that
24 done. Sometime between the 7th and the 17th of February
25 appears to me to be the time window that we have. All

1 right. Now --

2 MR. CAMPBELL: Mr. Chairman, may I just address
3 a procedural point on that motion?

4 CHMN. FOREMAN: Yes.

5 MR. CAMPBELL: As you point out, there's a time
6 clock on this, and the dates you specify are within the
7 time clock. So that's fine. It has to be done in 30
8 days. I should also note that the ratification, the
9 quorum can be telephonic as well as in person, so that
10 Members, if we select a date that only some of you can
11 attend, it is under the Open Meeting law allowable to also
12 vote telephonically.

13 CHMN. FOREMAN: All right. Well, we need to
14 find a place and time. Do you agree that the meeting can
15 be held in Maricopa County?

16 MR. CAMPBELL: I think on this, under the
17 circumstances of this case, to be absolutely certain, we
18 are going to try to find a space at the State Capitol
19 itself in Phoenix, because that's what the statute says,
20 and we believe we have such a room. That would be our
21 intention. We'll look into that during that time period
22 that you've given us.

23 CHMN. FOREMAN: All right. Please be in contact
24 with Ms. Williams, and we'll try and set that up.

25 Now, with regard to the other matter, the matter

1 of intervention. Is there a motion that anyone wishes to
2 make with regard to reconsidering the intervention
3 decision?

4 MEMBER HOUTZ: Mr. Chairman.

5 CHMN. FOREMAN: Member Houtz.

6 MR. HOUTZ: It appears that we're going to need
7 some kind of recorded vote on this. So I'll make a motion
8 to reconsider our decision on intervention of Ms. Bensusan
9 and Ms. Bayer.

10 CHMN. FOREMAN: Okay. Is there a second?

11 MEMBER PALMER: Second.

12 CHMN. FOREMAN: We have a motion by Member
13 Houtz, second by Member Palmer, to reconsider the decision
14 to grant intervention status to Ms. Bensusan and
15 Ms. Bayer. Is there further discussion?

16 (No response.)

17 CHMN. FOREMAN: All right. Member Eberhart.

18 MEMBER EBERHART: Aye. Excuse me, Mr. Chairman.
19 Could you repeat the motion?

20 CHMN. FOREMAN: The motion is to reconsider the
21 decision to deny intervention to.

22 MEMBER EBERHART: Mr. Chairman, I vote no to
23 reconsider the previous decision.

24 CHMN. FOREMAN: Member Houtz?

25 MR. HOUTZ: Explain my vote, please. I will

1 vote -- I vote no on the motion to reconsider, and I do
2 disagree with Mr. Hogan's legal interpretation of
3 40-360.05 and our authority to determine whether there is
4 an appropriate level of interest for people to intervene.
5 It is not an intervention by right as Mr. Hogan stated.

6 CHMN. FOREMAN: Okay. Member McGuire?

7 MEMBER MCGUIRE: No.

8 CHMN. FOREMAN: Member Mundell is absent.
9 Member Noland?

10 MEMBER NOLAND: No.

11 CHMN. FOREMAN: Member Palmer.

12 MEMBER PALMER: No.

13 CHMN. FOREMAN: Member Rasmussen.

14 MEMBER RASMUSSEN: No.

15 CHMN. FOREMAN: Member Whalen.

16 MEMBER WHALEN: I vote no, and may I explain?

17 CHMN. FOREMAN: Yes.

18 MEMBER WHALEN: Mr. Chairman, I believe that the
19 Committee needs to maintain the right to make this
20 decision based upon the facts that are presented to the
21 Committee at the time. I vote no.

22 CHMN. FOREMAN: Member Wong?

23 MEMBER WONG: Mr. Chairman, I would like to
24 explain my vote.

25 CHMN. FOREMAN: Yes.

1 MEMBER WONG: I want to record my vote as a nay
2 with the following explanation, that at the initial
3 hearing in Kingman, I made the motion to allow
4 intervention for both Ms. Bayer and Ms. Bensusan because I
5 think it's appropriate to err on the side of allowing for
6 more information rather than less information, especially
7 for the two intervenors that took the time and interest
8 and established their positions of interest in this
9 application.

10 This is not a large number of intervenors.
11 These are just two individuals out of hundreds of people
12 that live in the Kingman area. I don't think it would set
13 a precedent of opening the floodgates of intervenors.

14 Sometimes we have lay persons, such as Ms. Bayer
15 and Ms. Bensusan, who care enough about their community to
16 take the time and energy and efforts to develop a case,
17 present written testimony, as well as call witnesses.
18 They may take longer than lawyers and others who are more
19 versed in the process. They may be less efficient. They
20 may be less artful in their phraseology in questions and
21 testimony. But that's our process. That's the process of
22 public hearings and public participation. But my motion
23 was denied at the time for lack of a second.

24 Then Mr. Chair, you took the liberty to bend
25 over backwards to allow the two ladies to present their

1 evidence, putting them in a position that is above the
2 general public; and I think that the ladies did present
3 their evidence, had the time, and they presented it to
4 this Committee.

5 The Committee members then took the liberty to
6 synthesize that information and pose questions to the
7 witnesses, posed by the Applicant. Speaking for myself, I
8 did that. The information that I received from
9 Ms. Bensusan and Bayer allowed me to cross-examine, I
10 think, quite thoroughly all the Applicant's witnesses.

11 So having said that, the question is, by
12 including them as intervenors now after the full vetting
13 of the witnesses, are we going to glean any more new
14 information from them and their witnesses that would cause
15 us to have a different conclusion? I think not, speaking
16 for myself.

17 So with that explanation, I have to vote nay on
18 this motion. Thank you.

19 CHMN. FOREMAN: Member Youle.

20 MEMBER YOULE: Mr. Chairman, I think the
21 Committee properly exercised its discretion under ARS
22 40-360.05, so I vote nay.

23 CHMN. FOREMAN: And the Chair notes no. So by a
24 vote of ten to zero, the motion to reconsider, or I guess
25 by a vote of zero to ten, the motion to reconsider the

1 intervention of Ms. Bensusan and Ms. Bayer is defeated.

2 So do I have a motion then to adjourn the
3 hearing in Number 151?

4 MEMBER PALMER: So moved.

5 MR. RASMUSSEN: Second.

6 CHMN FOREMAN: All in favor signify by saying
7 aye.

8 (A chorus of ayes.)

9 CHMN. FOREMAN: Opposed?

10 (No response.)

11 CHMN. FOREMAN: Very good.

12 MR. CAMPBELL: Mr. Chairman, the Applicant
13 thanks you again for making a special effort to at least
14 consider our application.

15 CHMN. FOREMAN: Please get in touch with Tara
16 and try and set something up.

17 We'll take a minute or two break, and then we'll
18 move right into our hearing in Number 153, 154.

19 (The hearing concluded at 9:52 a.m.)

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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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7 I, GARY W. HILL, R.P.R., Certified Reporter
8 No. 50812, for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 31st day of January,
15 2010.
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19

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21 Gary W. Hill, R.P.R.
22 Certified Reporter, No. 50812
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